

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8

1. Fax Cover Sheet
2. Fee Transmittal Sheet
3. Petition for Extension of Time Under 37 C.F.R. § 1.136(a)
4. Response and Amendment Under 37 C.F.R. § 1.111

I hereby certify that the above-listed correspondence is being facsimile transmitted to the United States Patent and Trademark Office on October 30, 2003.



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Remarks

Applicants have amended the title of the invention and amended two paragraphs to capitalize the term QIAGEN, as requested by the Examiner. Applicants have also canceled withdrawn claims 12-13, 17-20, and 22. No new matter has been added.

Claims 23-42, are pending; claims 23-32 have been allowed.

I. Objections to the Specification

A. Title of the Invention

The Examiner has objected to the title of the invention as allegedly non-descriptive of the claimed invention. In response, Applicants have amended the title to "Lysyl Oxidase HOHEC84 Polynucleotides." Accordingly, Applicants believe that the instant objection has been obviated and should be reconsidered and withdrawn.

B. Trademark Usage for QIAGEN®

The Examiner has objected to the lack of capitalization and generic terminology for the trademark QIAGEN® as used in the specification at page 40. In response, Applicants respectfully submit that, as used in the specification in paragraphs 0116, 0159, 0229, and 0702-0703, the term QIAGEN is not used as a trademark referring to goods (*i.e.*, a QIAGEN® column), but rather as the proper name for the company that supplies the otherwise-described goods (*i.e.*, the pQE vector obtained from QIAGEN, Inc. of Chatsworth, CA). In that context, it is improper to use the trademark QIAGEN® rather than the proper name of the company. Moreover, there is no generic terminology that could be used for the company name, as would be the case if the term were being used as a trademark (*e.g.* KLEENEX® as compared with KLEENEX® facial tissues). Indeed, in similar usage on the company's website (www.qiagen.com) and in the company's literature, QIAGEN, Inc. does not utilize a trademark symbol. However, as the company does routinely capitalize its name, Applicants have amended paragraphs 0702-0703, which previously did not capitalize QIAGEN.

Accordingly, Applicants respectfully assert that the specification correctly uses the term QIAGEN, and thus the objection should be reconsidered and withdrawn.

II. Rejection of Claims 33-42 Under 35 U.S.C. § 112, First Paragraph

The Examiner has rejected claims 33-42 under 35 U.S.C. § 112, first paragraph as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. See Paper No. 5, pages 4-5. In particular, the Examiner requests an affidavit or declaration stating that the ATCC deposit has been deposited under the terms of the Budapest Treaty, and that all restrictions on public access to the deposit will be irrevocably removed upon the grant of a patent.

In response, Applicants' representative hereby gives the following assurance by signature below:

Human Genome Sciences, Inc., the assignee of the present application, has deposited biological material under the terms of the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure with the following International Depository Authority: American Type Culture Collection (ATCC), 10801 University Boulevard, Manassas, Virginia 20110-2209 (present address). The deposit was made on April 29, 1999, accepted by the ATCC, and given ATCC Accession Number 203980. In accordance with M.P.E.P. § 2410.01 and 37 C.F.R. § 1.808, assurance is hereby given that all restrictions on the availability to the public of ATCC Accession Number 203980 will be irrevocably removed upon the grant of a patent based on the instant application, except as permitted under 37 C.F.R. § 1.808(b).

In light of the above, Applicants submit that the instant rejection under 35 U.S.C. § 112, first paragraph has been obviated. Therefore, Applicants respectfully request that the rejection of claims 33-42 under 35 U.S.C. § 112, first paragraph be reconsidered and withdrawn.

Conclusion

Entry of the above amendment is respectfully solicited. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicants would expedite the allowance of this application.

If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an additional extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

Respectfully submitted,

Dated: October 30, 2003



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